

JURISPRUDENCE: PRESENTATION OF A TEXTBOOK

MEANS AND METHODS OF LEGAL REGULATION

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Svetlana Vladimirovna Boshno, Doctor of Legal Sciences, Professor, Head of Political Science and Law Department of the Russian Presidential Academy of National Economy and Public Administration, e-mail: boshno@yandex.ru.

Abstract.

The article discusses a method of legal regulation as a set of ways to influence the subjects of public relations. The article considers circumstances, predetermining the method of legal regulation of: the goals and objectives set by the state, uttering certain legal rules; features of the subjects of legal relations; the nature and the relationship of rights and duties of subjects of legal relations; provisions of subjects of legal relations to each other, mediated by their rights and responsibilities; various means of securing and protecting the rule of law; bases of occurrence of legal relationship (state act, agreement). The author gives a classification of methods and techniques of legal regulation. Imperative method is disclosed through obliging and prohibition. The article discusses ways of dispositive legal regulation: encouragement, recommendation. The author formulates the definition of indifferent dispositive norms. Their main technique of influence on subjects of public relations is informing on possible legal behavior without encouragement and recommendation.

Keywords:

method of legal regulation, ways of legal regulation, entitlement, bind, prohibition, dispositive method of legal regulation, imperative method of legal regulation, indifferent dispositive regulation, encouragement, positive responsibility, recommendation, in excess of the activity, competence.

1. The concept of the method of legal regulation

Law is called upon to actively influence on people's behavior. It is for this purpose that it is created, and it is for its achievement its effectiveness is assessed.

Law may affect the participants of public relations through diverse techniques that depend on the type of relationship, features of its participants and a number of other circumstances.

Method of legal regulation is a set of methods and ways of influence on the subjects of social relations.

Method of legal regulation depends on:

- the goals and objectives set by the state, uttering certain legal rules;
- the features of the subjects of legal relations;
- the nature and the relationship of the rights and responsibilities of subjects of legal relations;
- positions of subjects of legal relationship to each other, mediated by their rights and responsibilities;
- a variety of means of ensuring and securing the protection of the rule of law;
- justification of the legal relationship (state act, agreement).

Method of legal regulation depends on the goals and objectives set by the state, uttering certain legal standards. Activity of the state for a long period of time is defined by its functions. Goals can be achieved by active actions for the achievement of which the state «forces» by methods available to it to perform necessary actions for it. The goal can be the same, and methods of legal impact on people vary. A significant factor influencing the choice of methods in particular circumstances is a political regime, the power and authority of the state, the dominant ideology. Thus, the need to carry out large-scale construction could bring to life a variety of different legal solutions by a state: 1) make it an ideological construction, the national idea, and subjects of law under the influence of emotional condition of involvement into the high state affairs, will make the necessary (constructions of the 20th century); 2) get interested participants of public relations by attractive incentives to them - material or ideal - under the influence of which the subject of the law reaches the necessary state goals and shall be given a corresponding encouragement; 3) prohibit the alternative ways of achieving the objectives of a subject of law. It must achieve its objectives only if there is a match (or at least non-contradiction) of personal and governmental goals; 4) oblige (force) to make the necessary for the state action under the influence of punishment or action is carried out as a sanction for the offense committed earlier (forced labor).

The features of subjects of legal relations make influence on methods of legal effect of the state. Subjects of law may be made public. Then they are immediately empowered with the rights and duties of the state for the implementation of its functions that predetermines the characteristics of the impact on it by the supreme bodies of state power. Public entities have a dual origin, as on the one hand, in relation to some subjects (citizens), they are powerful and provide them with guidance as to their lawful conduct, and on the other hand – receive guidance on the vertical of state authorities. Citizens are only in horizontal relationships. Exerting influence on the participants of the public relations, a state uses the desired and undesired effects for specific subjects that matter to them. For example, citizens may be subject to imprisonment, and public authorities - to disband. Citizens are free to select the model of lawful behavior, and public authorities can only act within the limits of their competence.

Legal relations, as a general rule, are bilateral, respectively, two sides of

the relationship are in a certain position relative to each other. The nature and relationship of rights and duties of subjects of legal relations, reflecting their legal nature, has the position of the subjects with respect to one another as a result. Subjects of law always have reciprocal rights and obligations, but they can share them on an equal footing and in a position of dependence of one from the other. They can share the rights and responsibilities of their own free will or by force. And this is their position may vary in different legal relations with the same participants. Thus, the state and legal entity may meet in civil-legal relations. By the nature, civil relations are relations of equality, the relationship of rights and duties of subjects occurs at the request of the participants. These participants may enter into interaction to bring to legal liability. In such administrative relations, the parties are not equal to each other, and a public authority imposes requirements to a subordinate entity. Thus, **the position of the subjects of legal relations to each other, mediated by their rights and responsibilities**, characterizes the method of legal regulation. Coordination (equality) and subordination (obedience of one to another) are two main positions of the subjects with respect to one another.

In the enjoyment of rights and responsibilities, **various means of ensuring and protection of the rule of law** can be used. A set of these legal means is enough defined, it has been developed and is practically unchanged: punishment, reward. The formation of specific instruments within legal means is rather changeable, responds to changes in the social environment, the form of the state, legal ideology and other factors. So, it can be applied the death penalty, fine, deprivation of special rights and a broad range of sanctions, which are just determined by a form of a state. For example, a democratic state of law proclaims the principles of individualization and proportionality of punishment, humanism, which significantly affect the range of the means that the state can apply to controlled subjects. Thus, it is hardly possible today to enforce law by burning at the stake violators of traffic rules.

Basis of occurrence of legal relationship defines a set of means of legal interaction on subjects of law. Parties enter into a civil legal agreement of their own will, at their own risk. Legal rules provide them with the freedom to choose when entering into these relationships, they have the ability by themselves to determine their mutual rights and obligations in the agreement, provided that they comply with legislation. Contractual relationship is equal; the sanctions are intended to ensure the interests of parties to the contract.

Legal relations arising out of acts of public authorities, have powerful nature. State documents impose responsibilities on the participants of relations unilaterally without the participation of the subjects of legal relations. It is this relationship to be a primary protection of the public authorities by virtue of their public origin.

Public relations can be regulated by government orders, for example, management of state property, the payment of taxes. These relationships are not equal, one party possessing the power to have an impact on the other side, i.e., relationship is built on the principles of subordination. Relationships can also be built on the basis of equality and autonomy. A contract is often a basis for them. Civil legal relations, for example, are built so.

The separation of private and public relations, the admissible and binding, imperative and dispositive is of great importance. This distinction is most clearly

seen when comparing the civil and administrative relations. In civil relations, the parties act as legal entities and individuals. Public authorities act as legal entities and are unable to use their power. However, in legal relations, where the public body exercises the authority, norms of administrative law or other public law will be their regulator. In the Civil Code of the Russian Federation (p. 3 article 2) the issue is resolved as follows: «To the property relations based on administrative or other powerful subordination of one party to another, including tax, and other financial, and administrative relations, civil legislation is not applicable, unless otherwise provided by law».

There are imperative (mandatory) and dispositive (discretionary) methods of legal regulation.

2. Imperative method of legal regulation

Imperative method of legal regulation represents a set of methods and techniques, built on the principle of subordination of participants of legal relationships. With the effect of imperative, the subject has no choice, it must obey to a binding or restraining orders.

Ban is the obligation imposed on the subject of law to refrain from certain conduct. Implementation of the ban is carried out through omission of a subject of law. This method is imperative, as it does not provide alternatives to a single model of lawful behavior, i.e. inaction. Prohibitory rules may contain appropriate words: «prohibited», «not allowed», «no». Often verbs are not included in the text directly, but from the structure of a regulatory legal act, it follows that it describes precisely the prohibited conduct. As such, provisions of the Criminal Code of the Russian Federation are formulated. The prohibition on the execution of acts described in articles follows from the section title (crimes against a person) and the title of the chapter (crimes against life and health). Also, a ban can be inferred from the use of the word «punished» after the description of the offence itself. Committing the prohibited act is an offense and punished by appropriate legal sanctions. Sometimes the ban is closely fused with bind. In such situation, one and the same rule in content may be outlined with the use of the ban, and using bind as well. For example, article 125 of the Criminal Code of the Russian Federation «Abandonment in peril» stipulates the offence: deliberate abandonment without the help of a person who is in a life-threatening or health condition and deprived of opportunities to take steps for self-preservation on early childhood, old age, illness, or because of his powerlessness, in cases where the perpetrator was able to assist the person and was obliged to have the care or put him in a life-threatening or health status.

Article of the Criminal Code of RF formulates a legal requirement: not to leave a person without help. In fact, this is a ban on inactivity. And the same article states binding: to help that person. Prohibition to remain indifferent has been interpreted through requirement of action.

Binding is also an imperative method. Its influence is evident in the requirement for a subject to take a certain action. At the same time, there is the entitled party in a legal relationship, which is granted the right to demand fulfillment of the relevant obligations. Responsibilities can be established in various ways. In labor legal relations, the duty to come to work at a certain time corresponds to the employer's right to require to get started at a certain time. Obligation to pay taxes corresponds to the right of the tax authority to demand payment of taxes.

Alimentary duty of some members of the family corresponds to authority of others. Thus, parents pay child support, and their recipients are children, who have a right to claim. Failure to perform duty is the basis for the legal liability.

And prohibiting, and binding effect as forms of mandatory method of legal regulation have in common that that they arise without the desire of the subject of legal relations. The legal relationship arises on the grounds of legislation regardless of the interests of the obligated person. Authorized person (or a person acting on its behalf) its intention to use coercion embodies in the act (claim for alimony, a resolution to bring the tax liability, the court's decision, and the like).

Bind and prohibition are provisioned by sanctions of rules of law.

3. Dispositive method of legal regulation

Dispositive method is built on the principles of co-ordination and equality of parties and represents the impact of using what is permitted. The subject of law has the option of selecting a model of legitimate behavior within the limits established by legal norms. Optionality means that the parties have the right to enter into this relationship, but may not do so. Legislation can establish a ban on the establishment of responsibilities to engage in discretionary relations by its legal nature. Thus, labor relations are dispositive and, accordingly, forced labor is not allowed. However, in other branches of law – criminal law – there are exceptions in the regulation of relations in the sphere of labor. For example, Article 53.1 of the Criminal Code of RF establishes forced labor as a sanction. Forced labor is used as an alternative to imprisonment in cases stipulated by the relevant articles of the Special Chapter of the Criminal Code of the Russian Federation, for committing a crime of a minor or moderately serious offence or for committing a serious crime for the first time.

If, having imposed a sentence of imprisonment, the court will come to conclusion on the possibility of correcting the convicted person without actually serving the sentence in prison it decides to replace a punishment in the form of imprisonment to the convicted prisoner by forced labor. When a court sentencing deprivation of liberty for more than five years forced labor does not apply. No one shall be forced to conclude a civil-legal contract, marriage, which is predetermined by the dispositive legal nature of these relationships.

Dispositive method of legal regulation can have multiple manifestations, which are revealed by some of its rules.

Dispositive rules in general are **informative**. They report to the subject of law about the possibility of its lawful activity. In private legal relations (for example, civilian) citizens generally are free, including that they can perform actions that are not specified in the law. The subject of law determines by itself the need for the implementation of dispositive rules and begins to implement them.

But a certain vector of intentions from authorities may take place. Thus, the state in some cases may be interested in a particular behavior of subjects of law, but for some reason is not able to apply obliging or ban. Preserving the intention to influence participants of public relations, public authorities apply recommendations and encouragement. Unlike other dispositive rules (conditionally call them indifferent), the state has an interest to stimulate certain legal activity and uses for this motivation of subjects of law.

The recommendation method is used similar to incentive one, but does not provide for a specific award. Rules of law implementing this method may

contain words «desirable», «recommend», «offer», etc. The real impact of recommendation method depends on the credibility of their source, the author.

Recommendation is the proposal to perform a certain activity that has no specific encouragement. The subject of law will perform a recommendation based on the intention to be obedient, loyal, stands out from among other subjects of law with a desire to use it later on to its advantage. Encouragement can lay not on a surface, but to be a part of a legal status and at the right time to get a positive assessment from the part of interested state bodies.

The state, formulating a recommendation, in fact is waiting for execution, which corresponds to compel. This method of legal influence can be understood through the adage, i.e. «an offer you cannot refuse». And, indeed, if to eliminate this wait of state, then the norm will become redundant. It complements with recommendation that that already could be done in legal form. For example, make recommendation to legislative bodies to bring their acts in accordance to the parent document.

Important for the understanding of the legal nature of encouragement and recommendations is – a state of the feat, in excess of the activity. That is, the subject of the law voluntarily takes on additional responsibilities for the positive evaluation of its behavior from the part of the state. The recommendation is a proposal to accomplish anything without specific awards, and encouragement has a clearly established award.

The encouragement method assumes freedom of behavior of the subjects of law, on which it has a stimulating effect. For the desired type of behavior it is established an incentive (award, benefit, remuneration, etc.). This kind of effect is intended to guide the active behavior of subjects to achieve a certain goal.

Encouragement should represent to a subject of law the coveted award in the moral or material form. The choice of a particular award is cultural and historical features, and changes significantly due to the development of social relations. The predominance of financial incentives is a sign of our times. Combination of moral and material incentives is effective. Reducing liability or its removal may also serve as encouragement. So, art. 76.1 of the Criminal Code of RF stipulates that in a number of corpus delicti, the offender is released from criminal liability if it has compensated the damage caused to an individual, organization or a state in the result of the commission of a crime, and transferred to the federal budget monetary compensation in the amount of five times the amount of the damage caused, or contributed to the federal budget income received as a result of a crime, and the monetary compensation in the amount of five times the amount of income received as a result of a crime.

Norms has great social importance that act as stimulus of in excess of activity over a long period of time – 20, 30 and more years. Subject of law performs a number of proactive actions, knowing about the possible future reward. Such rules require responsible behavior from a lawmaker, since it does not have to change the conditions for the duration of the action for those who comply with conditions imposed. So awarding for a long-term activity with the Order will be impossible if the legislator cancels it. But it will be a punishment for those who consciously strive to achieve established targets for the awards.

«Honoring a hero» gives the maximum result. Lack of rewards deprives the act of heroism and, in fact, negates all actions of the active lawful subject.

Providing rewards unfairly reduces the overall positive potential of a reward, and may even generally deny it. Thus, it is known histories of mass awards to some dates, for example, the 850th anniversary of Moscow. As part of the company awards are distributed according to the list, requirements for candidates are reduced and as a result, completely different subjects receive awards, and the meaning of the award disappears.

Dispositive rules that do not motivate for a certain behavior by recommendations and promotions may be called **indifferent**. Their main method of influence on subjects of public relations is **information on possible lawful behavior**. Offer to a subject of law to exercise certain rights inherently in private law is redundant, as a subject of law is allowed everything that is not forbidden. In fact, the legislator shall inform the subjects of law on rational models. So, citizens can prepare any civil-legal contract, but they are offered contracts of purchase-sale, exchange, donation and others to make their choice easier. In fact dispositive legal regulation cannot be. In fact, it is dispositive only at the entrance to relationship. Optionality consists in the right to choose: to enter into this relationship or not. If the choice is made, the subject of the law immediately gets in action of imperative norms. Thus, subject of law, within the framework of the imperative method independently has decided to conclude a transaction in the amount of 100,000 rubles. And then, he has the legal duty to make a deal in writing that imperatively is stipulated in Art. 161 of the Russian Civil Code.

Competence, which consists in giving the subject the right to require another subject to perform certain actions in its favor, refers to dispositive method of regulation. Competence belongs to the person having the right, and it will be exercised only if the person under obligation performs certain actions. The legislation stipulates huge number of guarantees that can realistically be implemented only under condition of actions of other subjects. Thus, for the exercise of a constitutional right to education, there should be educational institutions that transform competence into informative process by its actions.

The permission is realized without participation of other subjects of law; it differs from competence by this. The permission consists in granting to the subject of law a possibility to act in a certain way and to consolidate results of this activity. Thus, the legislation enshrines the right to be the author of work and guarantees it. Permission provides the activity of citizens, as seeing the legal guarantees they develop. The person within the limits of permissions operates, satisfying its interests by its actions: the person has creative capacities to be the author and it becomes it (creates work). The legislation guarantees its rights and notifies other participants of public relations on existence of the law and its protection.

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